IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.5862 of 2002
with
SPECIAL CIVIL APPLICATION No.6100 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DINESHBHAI VITTHALBHAI PATEL

Versus

REGIONAL TRANSPORT OFFICER

Appearance:
MR PR THAKKAR for Petitioner No. 1
DELETED for Petitioner No. 2
MR PREMAL JOSHI, AGP for Respondent Nos.1-2

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 15/07/2002

COMMON ORAL JUDGEMENT

1. Notice in Spl.C.A. No.6110 of 2002. Mr.Premal Joshi, learned A.G.P. waives service as both matters involve identical issue. Heard Mr.P.R.Thakkar, learned

advocate for the petitioner and Mr.Premal Joshi, learned A.G.P. for the respondents. By consent of both the parties the matters are taken up for hearing and final disposal.

2. The petitioner is carrying on business of transporting passengers by buses from one place to another. The petitioner entered into a contract with certain schools / educational institutions for transportation of students and staff members of such educational institutions in Vadodara. In pursuance of such contract the petitioner applied for and were granted permits (Annexures-A & B), being contract-carriage permits under Section 74 of the Motor Vehicles Act, 1988 ("the Act"). It appears that Respondent No.1 issued a letter on 18-06-2002 calling upon the petitioner to paint the bus in yellow colour and also paint the words "Educational Institution Bus" within the circle of 60 cms. diameter on both sides of the vehicle. This letter was issued by Respondent No.1 by relying upon Rule 124-A of the Gujarat Motor Vehicles Rule, 1989 ("the Rules"), under instruction of the Transport Commissioner, Gujarat State, Ahmedabad vide letter dated 29-12-2001 and decision of the Regional Transport Authority, Vadodara taken at its meeting held on 10-01-2002. The petitioner has challenged the aforesaid letter by virtue of which the respondent No.1 - authority is compelling the petitioner to carry out the necessary changes by painting the bus in yellow colour and painting the words as aforesaid.

3. The case of the petitioner is that Rule 124-A of the Rules cannot change or attach further conditions to the contract-carriage permit granted under Section 74 of the Act and that too without hearing the affected parties. It is further contended that Section 2(11) of the Act defines the phrase "educational institution bus" and if the said definition is taken into consideration it is not possible for the authority to insist that the petitioner should paint the body of the bus as directed.

As against this Mr.Joshi, learned A.G.P. referred to the affidavit-in-reply and the annexures thereto in support of his submission that Rule 124-A of the Rules prescribes painting and marking of Educational Institution Bus in certain manner and the petitioner was required to follow the said Rule. It was further submitted that under Section 68 of the Act the State was empowered to constitute a State Transport Authority and a Regional Transport Authority. That the Transport

Commissioner was the ex-officio Secretary of the State Transport Authority which was constituted as such under section 68 of the Act and in that capacity had issued directions on 29-12-2001 in the form of a circular letter to all Regional Transport Officers that all buses plying on contract-carriage basis with Educational Institutions should be required to abide by provision of Rule 124-A of the Rules. It was also submitted that a meeting of the Regional Transport Authority which was held on 10-01-2002 had after considering the aforesaid letter dated 29-12-2001 decided that buses plying on contract-carriage basis with Educational Institutions would become amenable to Rule 124-A of the Rules. Attention of the Court was invited to both the circular letter dated 29-12-2001 and the Minutes of Meeting dated 10-01-2002, with special reference to Item No.6 of the Agenda of the said Minutes.

4. Rule 124-A of the Rules reads as under :

> "124-A. Painting and marking of Educational Institution Bus in certain manner :- The Educational Institution Bus shall be painted in yellow colour and the words "Educational Institutional Bus" shall be painted on both the sides of the Vehicles within a circle having diameter of 60 centimeters. "

5. It is apparent on reading of the said Rule that the phrase used is "Educational Institution Bus". Thus a question would arise : which vehicle answers that description. The said phrase has been defined by Section 2(11) of the Act, which reads as under :

> "2(11) "educational institution bus" means an omnibus, which is owned by a college, school or other educational institution and used solely for the purpose of transporting students or staff of the educational institution in connection with any of its activities. "

6. On plain reading of the definition it is apparent that an educational institution bus means an omnibus which is owned by an educational institution and used solely for the purpose of transporting students or staff of such institution in connection with any of its activities. Thus requirement of the provision is that an omnibus has to be owned by an educational institution, has to be used solely for the purpose of transporting students or staff of such institution, and the transporting of students or staff has to be in connection with activities of such educational institution. In the

present case, admittedly the first condition is not fulfilled. The omnibus is not owned by the educational institution, though it may be used for the purpose of transporting students and staff of educational institution in connection with activities of such educational institution. An apprehension was expressed on behalf of the respondents that the omnibus may not be used solely for the purpose of transporting students and staff but may be put to other use on holidays, during vacations, etc. Even if the anxiety so expressed might be justified to a certain extent it is not possible for the Court to overlook specific, clear and unambiguous language used in the statute; nor omit any word or words to justify an action not warranted otherwise by the provision as it exists. The words "which is owned by a college, school or other educational institution and" will have to be omitted from the definition clause in case the stand of the Respondents is to be upheld. The Court is not empowered to amend or legislate. It is settled law of interpretation that words used in a provision are presumed to have been used correctly and exactly as defined, and it is for those who assert the contrary to show that there is something in the subject or context which indicates that a different meaning should be read. In the present case neither in Section 2(11) of the Act nor in Rule 124-A of the Rules is there a situation where due to compelling words in the surrounding provision the Court would be required to adopt a meaning to the contrary i.e. contrary to the plain meaning which flows from the language employed.

7. The definition further stipulates that the omnibus is "used solely" for transporting students and staff. If it is not so used i.e. exclusively for such purpose, the prescribed condition is not satisfied. Hence, the definition clause will not apply. The respondents thus cannot reply only on Rule 124-A of the Rules overlooking Section 2(11) of the Act. They have to be read in conjunction. The law is well settled : a rule, which is a piece of subordinate legislation, cannot go beyond or override the parent act.

8. Section 68 of the Act which deals with Transport Authorities stipulates the manner in which the State Government shall constitute the Transport Authorities, whether a State Transport Authority or Regional Transport Authority. Sub-section (2) of Section 68 of the Act provides for the constitution of such authorities while sub-section (3) of Section 68 of the Act lays down the powers and functions of such authorities. Section 68(3) provides that every Regional Transport Authority shall

give effect to any directions issued under Section 67 of the Act, which gives power to the State Government to control Road Transport.

9. On a plain reading of Section 67 of the Act it becomes clear that the exercise carried out by the Transport Commissioner and the Regional Transport Authority in the present case does not fall within the scope of powers of the State Government granted under Section 67 of the Act. Therefore, even on that count the respondents cannot claim that the Regional Transport Authority, Vadodara was acting within the meaning of Section 68 of the Act because the State Government could not have issued any such direction under Section 67 of the Act.

10. Section 74 of the Act deals with grant of contract-carriage permit. Sub-section (2) of Section 74 provides for various conditions which a Regional Transport Authority may attach to the contract-carriage permit. Clause (ix) of sub-section (2) of Section 74 stipulates that a Regional Transport Authority may, after giving notice of not less than one month - (a) vary the conditions of the permit; (b) attach to the permit further conditions.

In the present case it is an admitted position that the Regional Transport Authority has not given any notice and hence it could not vary the conditions of the permit already granted nor could it attach further conditions to the permit by way of an insistence to paint the bus as stipulated in Rule 124-A of the Rules.

11. In light of what is stated hereinabove, this petition requires to be allowed. The impugned communication dated 18-06-2002 calling upon the petitioner to paint the omnibus in yellow colour and also to paint the words "Educational Institution Bus" within the circle of 60 cms. diameter on both sides of the vehicle is held to be bad in law, is quashed and set aside. The respondent - authorities shall not detain the vehicles of the petitioner on road for so-called non-compliance of Rule 124-A of the Rules.

12. The petitioner is hereby directed to furnish the registration numbers of the omnibus which are under contract with the educational institutions so as to enable the authorities to keep track of the vehicles being used for the purpose of activities of the educational institutions.

13. The petitions are allowed accordingly with the

aforesaid directions. Rule is made absolute. There shall be no order as to costs.

Sd/-

(D.A.Mehta, J)

'Bhavesh'